D.P.U. 94-110

Petition of Eastern Edison Company and Montaup Electric Company, pursuant to
G.L. c. 164 §§ 69H, 69I, 76, 94, 94B and 94G, and the Department's regional Integrated Resource Plan requirements, for review of the procedures by which additional energy resources are planned, solicited and procured by Eastern Edison Company and Montaup Electric Company.

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ORDER ON OFFER OF SETTLEMENT

I. INTRODUCTION

On June 1, 1994, pursuant to the regional integrated resource procedures adopted in D.P.U. 93-138/157-A (1994)[1] ("Procedures"), Eastern Edison Company ("Eastern") and Montaup Electric Company ("Montaup") (collectively "Companies") filed their regional integrated resource plan ("IRP") with the Department of Public Utilities ("Department").[2] The petition was docketed as D.P.U. 94-110.

Pursuant to notice duly issued, a public hearing was held on July 6, 1994 at the Department's offices in Boston.[3] The Attorney General of

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[1] D.P.U. 93-138 and D.P.U. 93-157 concerned, inter alia, the application of Montaup Electric Company and Eastern Edison Company seeking: (1) Department approval of the Memorandum of Understanding setting forth the coordinated procedures for planning reviews and resource approvals between the Department and the Rhode Island Public Utilities Commission; and (2) approval by the Department to exempt the Companies from the integrated resource management ("IRM") regulations.

[2] Eastern and Montaup are affiliates of Eastern Utilities Associates ("EUA"), which is a registered holding company. EUA owns directly all of the shares of common stock of three operating electric companies (the retail subsidiaries), Blackstone Valley Electric Company ("Blackstone"), Newport Electric Company ("Newport"), and Eastern. Eastern owns all of the permanent securities of Montaup, a generation and transmission company which supplies electricity to Eastern, Blackstone and Newport, and to municipal and unaffiliated utilities for resale (Executive Summary at 1).

[3] The IRP Procedures state that the Department may hold adjudicatory hearings and technical sessions as the public interest requires, beginning approximately three months after filing of the

(continued...)

the Commonwealth ("Attorney General") intervened pursuant to G.L. c. 12, § 11E. In addition, the Department granted the petitions for leave to intervene filed by the Coalition of Non-Utility Generators ("CONUG"), Massachusetts Energy Efficiency Council ("MEEC"), and Western Massachusetts Electric Company ("WMECo").

On September 14, 1994, the Companies filed a Settlement Agreement ("Settlement"). This Settlement is jointly sponsored by the Companies, the Attorney General, CONUG and MEEC (collectively "Parties").[4]

II. THE PROPOSED SETTLEMENT

The Settlement provides that, if approved, the Settlement would resolve all issues pertaining to the Companies' regional IRP proceeding, i.e., (1) all issues surrounding the methodology for determining, and updating the Companies' 1994 fifteen-year demand forecast solely for the purpose of determining the increment of resources that will be procured through the Companies' current IRP proceeding; (2) the contents and language of requests for proposals ("RFPs") for supply-side

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[3](...continued)
regional integrated resource plan, to allow time for settlement negotiations to take place (IRP Procedures at 9-10).

[4] WMECo elected not to sign the settlement. However, the Parties have been authorized to state that WMECo does not object to the Settlement (Settlement at 1, n.1).

resources and demand-side resources; and (3) the Companies' standards and method for ranking and selecting resources that will be procured through this proceeding (Settlement at 1-2). The Settlement states, inter alia, that it is submitted under the conditions (1) that it be approved without change or condition, on or before October 28, 1994,[5] and (2) that this proceeding will terminate without a finding by the Department as to the Companies' demand forecast, except as is necessary to support the process and procedures outlined in the Settlement to determine the increment of resources, if any, that will be procured through this proceeding (id.).

The Settlement reflects a resource need determination for 65 megawatts ("MW") of incremental resources by 1999, net of demand-side management ("DSM") to be procured during 1995 (id. at 2). The Settlement also provides for the Companies to update their fifteen-year forecast of resource needs on or before March 31, 1995 ("Reforecast") (id.).[6] Further, the Settlement states that the Reforecast would (1)

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[5] The Settlement filed on September 14, 1994 set a date of October 21, 1991, for the Department to issue an order relative to the Settlement. The Parties subsequently amended this date to October 28, 1994.

[6] The Companies will update all changes to the components of resource need to the nearest 0.1 MW (DPU-IR-1-6). All changes of at least 1 MW will be explained (id.).

reflect updated projections of the Companies' load, capability responsibility, and inventories of existing and planned resources, and (2) incorporate the most recent load data (including actual 1994 summer peak demand) as well as the most recent forecasts of weather, economic, demographic, price and other forecast inputs (id. at 2-3). The Settlement states that, if the new need is less than 49 MW or greater than 81 MW, and the Parties are not satisfied with the Companies' explanation for the change, parties could petition the Department to investigate the Reforecast (id. at 5).[7] Regardless of the actions taken by the Parties, the Department has the option to investigate the Reforecast if it results in a resource need of less than 49 MW or greater than 81 MW (DPU-IR-1-6). The Settlement also states that if the Department does not issue a final order on the merits of any petition, within 60 days from the filing of the petition, then the updated need projection would be used in the Companies' IRP (id. at 5).

[7] The Settlement states that the parties agree to restrict their petitions to those issues that directly caused the resource need to fall outside of the MW range stated above (id. at 5).

According to the terms of the Settlement, the Companies could make adjustments to their resource procurement or defer a portion of the resources being solicited to a future solicitation, following the Reforecast only as a documented result of (1) a loss or a gain of specific wholesale or retail customer loads or (2) a change in the rated net capacity of existing supply resources (id. at 5-6). The basis for the change would be filed with the Department with the preliminary award group filing (id. at 6).

Pursuant to the Settlement, parallel RFPs would be issued for supply and demand resources on or before July 1, 1995 (id.). On the supply side, the Settlement states a preference for projects that are viable, flexible and would increase system reliability (id. Att. 1, at 6-7).

Under the Settlement, the Companies could reduce the three-year DSM budget only under the following three circumstances: (1) if there are not sufficient cost-effective resources to fill the budget; (2) if cost recovery is denied by regulators; or (3) if the Companies revise their projections of costs for administration, monitoring and evaluation and other Company DSM activities (id. at 9).

The Settlement states that, if approved, the Companies will amend their IRP filed with the Rhode Island Public Utilities Commission by Blackstone and Newport, to be consistent with this

Settlement (id. at 10).[8]

III. ANALYSIS AND FINDINGS

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with Department precedent and public policy. See Western Massachusetts Electric Company, D.P.U. 94-12, at 4 (1994); Fitchburg Gas and Electric Company, D.P.U. 92-181, at 12 (1993); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992; Barnstable Water Company, D.P.U. 91-189, at 4 (1992); Fall River Gas Company, D.P.U. 91-61, at 3 (1991); Cambridge Electric Light Company; D.P.U. 89-109, at 5 (1989); Southbridge Water Supply Company, D.P.U. 89-24 (1989).[9]

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[8] Specifically, within ten days of receiving an order of the RIPUC, the Settlement states that the Companies will notify the parties to the Settlement and the Department of all inconsistencies between the two Commissions' orders and will propose a means of reconciling such differences (Settlement at 10).

[9] In this Order, the Department moves into evidence (1) the IRP filing submitted by the Companies to the Department on June 1, 1994, including all attachments, exhibits, and subsequent amendments, updates, and revisions, as of the date of this Order, (2) the Offer of Settlement the Companies filed with the Department on September 14, 1994, and (3) all responses to information requests submitted by the Companies to the Department on October 15, 1994.

The Settlement in this proceeding represents agreement among a range of interests. It is appropriate to accept a proposed settlement agreement if the intended purpose of an IRP procedure -- to implement procedures by which additional resources are planned, solicited, and procured to meet an electric company's obligation to provide reliable electrical service to ratepayers at the lowest total cost to society -- would not be advanced if we were to continue our review of the current IRP filing. See IRP Procedures, at 1. The Department notes that the interests of ratepayers are served by an IRP process that is flexible in the means employed to establish the need for and the cost of additional resources.

For these reasons, the Department finds that continuing to review the Companies' IRP filing at this time would not yield any clear benefits to ratepayers. Therefore, the Department finds that the interest of ratepayers would best be advanced through acceptance of the Settlement. Accordingly, the Department approves the proposed Settlement.

Our acceptance of this Settlement should not be interpreted as establishing precedent for further IRP filings and our acceptance does not constitute a determination or finding on the merits or any aspect of the Companies' filing.

Implicit in approving the Settlement is the understanding that the Companies will not be presenting their own resources to fill the identified resource need. Where a company intends to bid its own projects in response to its RFP, the Department expects the company to take appropriate steps to minimize the potential for self-dealing and to allow bidders an opportunity to develop appropriate projects. Therefore, in procurements in which the company itself intends to bid, both price and non-price criteria, as well as other aspects for evaluating projects, should be clearly identified before bids are solicited.

Further, acceptance of this Settlement does not preclude the Department from exercising its statutory and regulatory responsibilities pursuant to Massachusetts General Laws and all corresponding regulations and procedures. Such responsibilities cannot be restricted by the terms of a settlement agreement. The Department takes special note of the proposed bandwidth of 49 to 81 MW for changes in the demand forecast. The Department puts parties on notice that a settlement providing for the modification of a company's need determination subsequent to the Department's acceptance of such settlement cannot preclude Department review.

IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the Settlement Agreement, filed with the Department on September 14, 1994 and jointly sponsored by the Eastern Edison Company, Montaup Electric Company, the Attorney General, the Coalition of Non-Utility Generators, Inc., and the Massachusetts Energy Efficiency Council, Inc., be and hereby is approved.

By Order of the Department,

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Kenneth Gordon, Chairman

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Mary Clark Webster, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).